

# In the Supreme Court of the State of Idaho

IN RE: AMENDMENT OF IDAHO )  
CRIMINAL RULE (I.C.R.) 33 ) ORDER

The Court having reviewed a recommendation from a special subcommittee of the Criminal Rules Advisory Committee to amend the Idaho Criminal Rules, and the Court being fully informed;

NOW, THEREFORE, IT IS HEREBY ORDERED that the Idaho Criminal Rules as they appear in the volume published by the Idaho Code Commission be, and they are hereby, amended as follows:

1. That Rule 33.3 be, and the same is hereby, amended as follows:

## **Rule 33. Sentence and judgment**

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(e) Discretionary jail time. As used herein, "discretionary jail time" means jail time to be served at the discretion of the probation officer as a sanction for violating a term or condition of probation. It does not include incarceration in jail in order for a defendant to obtain treatment or programming provided in the jail, even if the probation officer determined that such treatment or programming was needed because of the defendant's violation of a term or condition of probation.

As a condition of probation, the sentencing court may provide for the service of a specified period of discretionary jail time, to be served as follows:

(1) Upon receipt of a written statement of facts made under oath or affirmation by the probation officer showing probable cause to believe that the defendant violated any term or condition of probation, a court may order in writing that the defendant serve a specified number of days of the discretionary jail time.

(2) If, without a court order issued pursuant to subsection (1), a defendant is arrested pursuant to Idaho Code Section 20-227 for violating a term or condition of probation, there shall be a judicial determination of probable cause within forty-eight (48) hours of the arrest. If, within that time period, there is no judicial finding that there was probable cause for the arrest, the defendant shall be

released. If there is a judicial finding of probable cause within that time period, the defendant shall be released seventy-two (72) hours after the arrest unless the sentencing court has ordered a longer period of jail time. If, when delivering the defendant to the jail, the probation officer informs the jail authorities in writing that the defendant is to serve a specific period of time in jail that is less than forty-eight (48) hours, the defendant may be released upon the conclusion of that specific period without further court approval.

(3) The number of consecutive days served as discretionary jail time shall not exceed three (3) days.

(4) Any time served in jail as discretionary jail time shall be credited against the period of discretionary jail time specified as a condition of probation.

(5) If the defendant is arrested pursuant to Idaho Code Section 20-227 for violating the conditions of probation and a motion seeking a judicial finding of a probation violation is not filed with respect to the conditions allegedly violated, the time served in jail pursuant to that arrest shall be credited against such period of discretionary jail time.

(6) Nothing herein shall limit a sentencing court's authority to impose additional terms and conditions of probation including jail time.

**(ef) Revocation of probation.** The court shall not revoke probation except after a hearing at which the defendant shall be present and apprised of the grounds on which such action is proposed. The defendant may be admitted to bail pending such hearing. The court shall not revoke probation unless there is an admission by the defendant or a finding by the court, following a hearing, that the defendant willfully violated a condition of probation.

**(fg) Waiver of fees and costs.**

(1) A person who has been sentenced by the court following a plea of guilty or finding of guilt may have his or her probation revoked or be found to be in contempt for failure to pay a fine, fee, or costs only if the court finds that the person has willfully refused to make such payment, or has failed to make sufficient bona fide efforts to legally acquire the resources to make such payment.

(2) A fee or cost imposed by statute on persons who plead guilty to or are found guilty of any offense may be waived in whole or part by the court only when there is a specific provision in statute allowing for the waiver of such fee or cost.

(3) A court may waive all or part of a fee or costs imposed by statute only upon making findings in writing or on the record that each statutory standard for the waiver of such fee or costs has been satisfied. If the court decides to waive such fee or costs in whole or in part, the court shall make such determination with regard to each offense on which the defendant is or has been sentenced, and shall determine whether such fee or costs shall be waived in whole or in part.

IT IS FURTHER ORDERED, that this order and these amendments shall be effective the first day of July 2015.

IT IS FURTHER ORDERED, that the above designation of the striking of words from the Rules by lining through them, and the designation of the addition of new portions of the Rules by underlining such new portion is for the purposes of information only as amended, and NO OTHER AMENDMENTS ARE INTENDED. The lining through and underlining shall not be considered a part of the permanent Idaho Criminal Rules.

IT IS FURTHER ORDERED, that the Clerk of the Court shall cause notice of this Order to be published in one issue of *The Advocate*.

DATED this 23 day of April, 2015.

By Order of the Supreme Court

R. Burdick  
Roger S. Burdick, Chief Justice

ATTEST: Stephen Kenyon  
Clerk

I, Stephen W. Kenyon, Clerk of the Supreme Court of the State of Idaho, do hereby certify that the above is a true and correct copy of the Order entered in the above entitled cause and now on record in my office.  
WITNESS my hand and the Seal of this Court 42775

STEPHEN W. KENYON

By: Carol A. Schmar